

Members

Rep. Jud McMillin  
Rep. Ralph Foley  
Rep. John Bartlett  
Rep. Shelli VanDenburgh  
Sen. James Banks  
Sen. R. Michael Young  
Sen. James Arnold  
Sen. Greg Taylor  
Gretchen Gutman  
Gary Miller  
Hon. Margret G. Robb  
Mike McMahon  
Jerry Bonnet  
Matt Light  
Anita Samuel



## CODE REVISION COMMISSION

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LSA Staff:

John Stieff, Attorney for the Commission

Authority: IC 2-5-1.1-10

### MEETING MINUTES<sup>1</sup>

Meeting Date: November 15, 2011  
Meeting Time: 1:30 P.M.  
Meeting Place: State House, 200 W. Washington St., 233  
Meeting City: Indianapolis, Indiana  
Meeting Number: 2

**Members Present:** Rep. Ralph Foley, Chairman; Rep. Jud McMillin; Rep. John Bartlett; Rep. Shelli VanDenburgh; Sen. R. Michael Young; Gretchen Gutman; Gary Miller; Hon. Margret G. Robb; Mike McMahon; Jerry Bonnet; Matt Light; Anita Samuel.

**Members Absent:** Sen. James Banks; Sen. James Arnold; Sen. Greg Taylor.

**Staff Present:** Mr. Jack Ross, Executive Director, Legislative Services Agency; Mr. John Stieff, Director, Office of Code Revision, Legislative Services Agency; Ms. Margaret Piety, Staff Attorney, Office of Bill Drafting and Research; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Mr. John Kline, Attorney, Office of Code Revision.

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<sup>1</sup> These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

## **I. CALL TO ORDER**

The meeting was called to order at 1:35 p.m. by Representative Ralph Foley, Chairman.

## **II. REVIEW OF MINUTES**

The Commission reviewed the minutes of the Commission's last meeting on October 18, 2011, and there were no questions or revisions. The Commission approved the minutes by consent.

## **III. INTRODUCTION**

Mr. John Stieff, Director of the Office of Code Revision, made a few introductory remarks and explained continuing projects dealing with noncode provisions, the technical corrections bill, state civil service legislation, and population parameters for discussion by the Commission.

## **IV. DISCUSSION OF NONCODE STATUTES PROJECT AND DRAFT**

Mr. John Kline, Attorney, Office of Code Revision, Legislative Services Agency, noted that a noncode bill passed in the 2011 legislative session (SEA 490-2011) accomplished the final task in organizing all the noncode statutes for the years through 2009. He stated that the noncode follow-up bill, presented as PD 3382, is the proposed draft to address the noncode provisions from 2010 through 2011, to repeal obsolete provisions in the 2011 noncode bill, and to make one technical correction to the noncode bill from the 2011 session.

Mr. Kline referenced a summary handout with a description of the sections of law in the follow-up bill and the disposition for each section, whether the law is being repealed or amended. He noted that PD 3382 consists of 97 SECTIONS that can be divided into 4 categories described as follows:

1. The first category is obsolete noncode provisions that are being repealed by the bill.
  - A. Criminal law applicability provisions are being repealed consistent with the structure "The amendments to section x of this chapter by P.L.X apply only to crimes, acts, or offenses committed after a certain date." The Legislative Services Agency drafters no longer draft these types of provisions because they simply state that the criminal law they apply to cannot be applied retroactively, and the state is already prohibited by Article 1, Section 10 of the United States Constitution from enacting ex post facto legislation, so this wording is an unnecessary duplication of this prohibition.
  - B. The remaining 6 SECTIONS in the category of noncode being repealed deal with provisions that have an applicable time frame that has expired. (SECTIONS 2, 29, 33, 90, 92, and 93)  
 One SECTION was pointed out in particular (SECTION 29), which deals with a chapter that was inserted in 1988 to provide a term of protection regarding the purchase and lease of motor vehicles (a type of lemon law). The law provides for an 18 month time frame for a term of protection followed by a two year period in which a consumer can file an action under the chapter. Chairman Foley noted an additional noncode provision in the same bill from 1988 (P.L.150-1988, SEC.2 - IC 24-5-13-0.1) related to the contracts and leases for vehicles that is also obsolete under that three and a half year effective time frame, and that provision was proposed as an insertion to the PD for repeal.
2. The second category is noncode SECTIONS that are being moved into the Indiana Code because they have a continuing effect on the law and would normally be codified. (Codified in SECTIONS 4, 6, and 24) (Mr. Kline noted that these provisions are simply being moved

from the noncode into the Code, and the corresponding noncode law is repealed.)

3. The third category is a technical correction to a noncode section that was codified by the previous noncode bill P.L.220-2011 (SECTION 22). The 2011 noncode bill contained a cross-reference in IC 16-40-4-10 to IC 16-40-4, which should have been a reference to IC 16-40-5, so the PD makes a technical correction to fix the reference.

4. The last category contains noncode provisions that are being amended to add an expiration date to the noncode provisions so that those provisions can be removed when they no longer have an ongoing effect (SECTIONS 94 and 95). The PD adds an expiration date 2 years after the effectiveness of the provision has expired, which is consistent with LSA's current drafting style for noncode provisions.

Senator R. Michael Young inquired about SECTION 33, regarding the legalizing of marriages between first cousins solemnized before April 9, 1907, and asked if this SECTION should not be repealed because of the possibilities of ongoing property transactions and transfers related to individuals in these types of marriages. Mr. Kline noted that repealing this provision in the noncode does not affect the legalization of the marriages or the validity of the provision during the time of applicability. Senator Young reiterated his concerns about property implications. Mr. Kline noted that if there was a concern among the members, the provision could be removed from the bill to avoid any possibility of making a substantive change. Mr. John Stieff noted the difficulty in proving a provision's obsolescence, and suggested that the provision could be removed from the PD.

The Commission agreed by consent to remove SECTION 33 from PD 3382. The Commission agreed by consent to add to PD 3382 the noncode SECTION P.L.150-1988, SEC.2, referenced by Representative Foley. A motion was made to introduce PD 3382, and the Commission agreed by voice vote. Mr. Jerry Bonnet inquired about the historical value of leaving in the noncode SECTION 93 concerning the property tax caps. Mr. John Stieff noted that the information would remain in the Acts of Indiana for historical reference.

## **V. DISCUSSION OF STATE CIVIL SERVICE LEGISLATION**

Peggy Piety, Senior Attorney, Office of Bill Drafting and Research, presented legislation concerning state civil service legislation for consideration by the Commission. Ms. Piety referenced a provision in the 2011 budget bill providing a request from the Legislative Council to the Code Revision Commission to update Indiana Code references to the new law consolidating and modernizing the state civil service system. Ms. Piety noted that PD 3448 contained a partial group of sections to update language without any substantive changes to the law. Ms. Piety described several types of sections contained in the PD and explained the changes.

Representative Foley asked if PD 3448 was coordinated with a bill being prepared for the Criminal Code Evaluation Committee, and Ms. Piety responded that she would consult with staff to determine any overlaps. Ms. Gretchen Gutman inquired about the gameplan for the other sections not contained in PD 3448 regarding conforming changes. Ms. Piety noted that PD 3448 contained only those sections that were technical in nature, and that the remaining sections may have some substantive changes and would be placed in a separate PD.

A motion was made by Senator R. Michael Young to adopt the PD as drafted, and the motion was approved by consent. Mr. Stieff noted that an option for PD 3448 would be to insert the draft into the technical corrections bill.

## **VI. DISCUSSION OF TECHNICAL CORRECTIONS BILL**

The Commission next heard from Craig Mortell, Deputy Director of the Office of Code Revision (OCR), who had previously sent to Commission members a memo detailing proposed revisions in and additions to PD 3217, the technical corrections (TC) draft discussed by the Commission at its October 18 meeting. Using a checklist distributed by Mr. Mortell, Representative Foley led the Commission in deciding whether certain proposed revisions and additions would be incorporated into the 2012 TC bill adopted by the Commission. The decisions of the Commission were as follows:

[1] The Commission decided in favor of revising PD 3217's SECTION 13 so that the 2012 TC bill will amend IC 4-21.5-3-1(h)(1) to read as follows:

(h) The filing of a document with an ultimate authority is complete on the earliest of the following revision of IC 4-21.5-3-1(h)(1):

(1) The date on which the document is delivered to the ultimate authority:

(A) under subsection (b) **or** (c); ~~or and~~

(B) **in compliance with subsection c: (e).**

[2] The Commission decided in favor of including in the 2012 TC bill a SECTION amending IC 9-24-19-2 to address the problem recognized by the Court of Appeals in the recent case of *State of Indiana v. Skylor Gerald*s. The problem, as noted by Judge Vadik, is that IC 9-24-19-2's reference to "the violation described in subdivision (1)" refers not to the recent violation for which a penalty is being imposed but *the prior unrelated violation*. Due to this problem, IC 9-24-19-2 provides in effect that driving on a suspended or revoked license is a Class A misdemeanor if less than ten years have elapsed between:

(1) the date on which a judgment was entered for a prior unrelated violation; and

(2) the date on which *the prior unrelated violation* was committed.

The General Assembly must have intended for IC 9-24-19-2 to provide that driving on a suspended or revoked license is a Class A misdemeanor if less than ten years have elapsed between:

(1) the date on which a judgment was entered for a prior unrelated violation; and

(2) the date of *the recent violation for which a penalty is being imposed*.

The SECTION that the Commission decided to include in the 2012 TC bill would address the problem by revising IC 9-24-19-2 as follows:

Sec. 2. A person who operates a motor vehicle upon a highway when the person knows that the person's driving privilege, license, or permit is suspended or revoked ~~when commits a Class A misdemeanor if, less than ten (10) years have elapsed between: before the date on which the person operates the motor vehicle knowing that the person's driving privilege, license, or permit is suspended or revoked, (1) the date a judgment was entered against the person for a prior unrelated:~~

(1) ~~violation of infraction under~~ section 1 of this chapter; or

(2) **offense or infraction under:**

(A) this section;

(B) IC 9-1-4-52 (repealed July 1, 1991); or

(C) IC 9-24-18-5(a) (repealed July 1, 2000).

~~and (2) the date the violation described in subdivision (1) was committed; commits a Class A misdemeanor.~~

[3] The Commission decided in favor of changing the term defined in one of the "IC 12-14-45" chapters added in 2011 (which would be re-inserted into the Code by PD 3217 as a new section IC 12-15-46-1) from "state amendment plan" to "state plan amendment" because the term actually used in the law is "state plan amendment".

[4] In SECTION 85 of PD 3217, in IC 15-13-3-11(d), the Commission decided in favor of relocating the new words "established under this section" from their place immediately following "the commission" to the place immediately following "a subsidiary corporation".

[5] The Commission decided in favor of including in the 2012 TC bill a SECTION amending references in subsections (b) and (c) of IC 31-19-25.5-5 as follows:

Sec. 5. (a) This section applies . . .

(b) Except as provided under subsections (d) and ~~(e)~~, **(f)**, the state registrar shall release the name and address of a pre-adoptive sibling to an adoptee who submits a written request under section 2 of this chapter if . . .

(c) Except as provided under subsections (d) and ~~(e)~~, **(f)**, the state registrar shall release the name and address of an adoptee to a pre-adoptive sibling of the adoptee who submits a written request under section 2 of this chapter if . . .

[6] The Indiana Judicial Center had proposed the inclusion in the 2012 TC bill of a SECTION amending IC 31-40-1-2(b) as follows: "(b) The department shall pay the cost of returning a child under IC 31-37-23 **or IC 11-13-4.5-1.5.**"

Mr. Mortell reported that, because this proposed amendment would at least create the appearance of imposing additional costs on the Department of Child Services (which is referred to as "the department" in IC 31-40-1-2(b)), OCR had invited the Department of Child Services (DCS) to comment on the proposed amendment, and that Brady Brookes, the Legislative Director of the DCS, had replied that the DCS "is OK with the proposed change". However, Senator Young expressed the opinion that it would be better if the proposed amendment were put before the General Assembly in a bill other than the TC bill. The Commission decided against including the proposed amendment to IC 31-40-1-2(b) in the 2012 TC bill.

[7] The Commission decided in favor of omitting SECTION 197 of PD 3217, which would have amended IC 35-47-2-17, from the 2012 TC bill.

[8] The Commission decided in favor of including in the 2012 TC bill a SECTION amending IC 35-51-4-1 as follows:

Sec. 1. The following statutes define crimes in IC 4 . . .

IC 4-31-13-9 (Concerning ~~the lottery~~; **horse racing**).

In addition, the Commission decided to include in the 2012 TC bill the two "close call" SECTIONS specifically discussed at the Commission's October 18 meeting:

SECTION 12 of PD 3217, which resolves the conflict affecting IC 4-12-4-9 between HEA 1233 (which granted the Indiana Tobacco Use Prevention and Cessation Executive Board one additional power) and HEA 1001 (which abolished the Indiana Tobacco Use Prevention and Cessation Executive Board and transferred all of its powers to the Department of Health).

SECTION 207 of PD 3217, which amends IC 36-7-4-214(a) to replace the word "incorporated" with its antonym, "unincorporated."

After deciding on these additions, changes, and deletions, the Commission voted in favor of adopting PD 3217 -- as altered by the additions, changes, and deletions -- as the 2012 technical corrections bill. The commission then decided to include in the 2012 technical corrections bill the SECTIONS of PD 3448, which was presented to the Commission earlier in the meeting by Peggy

Piety, and which the Legislative Services Agency was mandated by P.L.229-2011 to prepare so as to organize and correct statutes affected by the 2011 repeal of the state personnel department law (IC 4-15-1.8) and the 1941 State Personnel Act (IC 4-15-2).

## **VII. DISCUSSION OF POPULATION PARAMETERS**

Mr. Stieff recapped the information presented in the last meeting regarding population parameters in the Indiana Code. Mr. Stieff requested the Commission to consider a recommendation to the Census Data Advisory Committee regarding the continued use of population parameters or using the name of the subdivisions for laws related to specific locations in the Indiana Code. Mr. Stieff asked if the Code Revision Commission would like to make a recommendation to the Legislative Council that future legislation referring to Indianapolis and Marion County refer to the name of the respective political subdivision and not refer to "a consolidated city" or "a county containing a consolidated city".

Representative Shelli VanDenburgh stated that for transparency it would be better to use the name of a subdivision instead of referring to an entity by population. Judge Margaret Robb noted that if a population parameter is used and it could refer to more than one entity, the change to use an entity name could result in a substantive change in the law. Representative Foley mentioned that a change from populations to entity names could provoke controversy, and he suggested the Commission recommend to the Census Data Advisory Committee to use population parameters and to use the name "consolidated city" instead of "Indianapolis", consistent with the current Indiana Code. Representative VanDenburgh noted that if the legislature uses population parameters it is difficult for legislators and constituents to know who is being affected by the law. Some discussion ensued regarding special legislation and recent court decisions. Representative Jud McMillan asked if the Commission could have a middle ground and use both the entity names and population parameters. Representative Foley reiterated his concerns of making a substantive change in the law, and Representative Bartlett stated that it would be better to make these changes legislatively rather than through the Code Revision Commission.

A motion was made by Chairman Foley to recommend to the Census Data Advisory Committee that the current population parameters in the Indiana Code be updated based on the new census data. A roll call vote was taken with the following results:

**Eleven votes in favor; one vote opposed.**

### Vote Member

Yes Rep. Jud McMillin  
 Yes Rep. Ralph Foley  
 Yes Rep. John Bartlett  
 No Rep. Shelli VanDenburgh  
   - Sen. James Banks  
 Yes Sen. R. Michael Young  
   - Sen. James Arnold  
   - Sen. Greg Taylor  
 Yes Gretchen Gutman  
 Yes Gary Miller  
 Yes Hon. Margret G. Robb  
 Yes Mike McMahon  
 Yes Jerry Bonnet  
 Yes Matt Light  
 Yes Anita Samuel

**VIII. OTHER BUSINESS**

At Mr. Stieff's request, the Commission authorized the inclusion in the digest of the legislation the following statement: "The introduced version of this bill was prepared by the Code Revision Commission.".

**IX. ADJOURNMENT**

Chairman Foley thanked the staff and members for their work. The meeting was adjourned by Representative Foley at 3:05 p.m.